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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,603	09/26/2003	Isao Osako	243307US3	9903

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EXAMINER
STULII, VERA

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
04/17/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/670,603	OSAKO ET AL.	
	Examiner	Art Unit	
	VERA STULII	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 January 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 4-6* is/are pending in the application.

4a) Of the above claim(s) *7* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1 and 4-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 22, 2008 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rendered indefinite for the recitation of the phrase “immediately after the boiling”. The term "immediately" in claim 1 is a relative term which renders the claim indefinite. The term "immediately" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For the purposes of expedited examination the packing half-boiled noodles “immediately after the boiling”, is being interpreted as packing the noodle while still hot.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komatsu et al (US 3,930,041) in view of Ando (US 3,892,874).

The references and rejection are incorporated as stated in the previous Office action.

In regard to newly added limitation of packing half-boiled noodles "immediately after the boiling", as stated above the packing half-boiled noodles "immediately after the boiling", is being interpreted as packing the noodle while still hot. Regarding this limitation Komatsu et al discloses that the packaging is performed under the conventional method of hot filling, i.e. packaging the food in the container while still being hot (Col. 8 lines 48-50, 62-68, Col. 9 lines 1-5).

Response to Arguments

Applicant's arguments filed November 1, 2007 have been fully considered but they are not persuasive.

On page 5-6 of the Reply to the Office action mailed June 5, 2007 Applicants state that Komatsu does not "describes boiling the noodles such that the moisture content of the half-boiled noodles is within a range of 45-60%". In response to this argument, it is noted that Komatsu et al disclose cooked or semi-cooked (half-boiled) foods such as noodles filled in the container (Col.8 lines 17, 20, 28, 38-39). Further in

this regard it is noted, that claim 1 recites semi cooked (half-boiled) noodles as well. Therefore, the moisture range of the noodles as taught by Komatsu would be expected to be in the range as recited. The degree of cooking depends on the moisture level of noodles. Since Komatsu already discloses the half-boiled state of noodle, the moisture level would be inherently in the range as recited absent any clear and/or convincing arguments to the contrary.

In response to applicant's arguments against the Ando reference individually (pages6-7 of the Reply), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

On page 7 of the Reply Applicants state that:

> The Office Action, at page 3, states that "[i]t is also noted that Komatsu teach that packaged article is naturally cooled while being transferred from heat-sealing step to the over-pressure cooling step." However, it is noted that amended Claim 1 recites "packaging the half-boiled noodles, immediately after the boiling the noodles." Thus, the natural cooling described in Komatsu cannot occur when the half-boiled noodles are packaged immediately after the noodles are boiled. Ando describes that "the noodles in the sealed container are passed into a cooling chamber to complete the production."4 As noted above, the noodles in Ando are already dehydrated. Thus, the cooling process described in Ando is not a slow cooling that allows moisture to permeate from the outer alpha layer of the half-boiled noodles into an inside beta part of the half-boiled noodles to equalize a moisture content therein.
> Therefore, it is respectfully submitted that the combination of Komatsu and Ando does not disclose or suggest every feature recited in Claim 1. Thus, it is respectfully requested that the outstanding rejection of Claim 1, and Claims 4-6 which depend thereon, as unpatentable over Komatsu in view of Ando be withdrawn.

Examiner respectfully disagrees. As stated in the previous Office actions, In regard to claim 1, Komatsu et al disclose "the hermetic sealing process for deaerating and heat-sealing a packaged article comprising a container having a heat-sealable resin coating on the inner surface" (Abstract). Komatsu et al disclose cooked or semi-cooked (half-boiled) foods such as noodles filled in the container (Col.8 lines 17, 20, 28, 38-39). Komatsu et al also disclose that "according to this invention, after a cooked or semi-cooked food is filled in a container, deaeration is carried out for excluding air and other gas harmful for heat-sterilization, preservation and re-heating" (Col.8 lines 48-50). Komatsu et al also disclose that such deaeration can be accomplished by "a method in which air and other gas in the packaged article are replaced by steam, for instance, a hot filling method, an exhausting evacuation method and a steam flashing method" (Col.8 lines 57-60). Komatsu et al also discloses a natural cooling of packaged article between the heat-sealing step and overpressure cooling step" (Col. 13, lines 66-68). Komatsu et al also discloses that "it is sufficient that the temperature adopted at the overpressure cooling step is lower than the temperature at which the vapor present on the sealed interface of the heat-sealed sealant, namely 100ºC in the case of steam" (Col.14, lines 38-42). Komatsu et al also discloses that "it is most desired that a cooling press adjusted to 5ºC to 25ºC is employed" (Col.14 lines 46-47). Komatsu et al also discloses that "when a packaged article according to this invention is subjected to the heat-sterilization treatment … the content food can be preserved for a very long time sufficiently" (Col. 16 lines 3-7). Komatsu et al discloses that the packaging is performed under the conventional method of hot filling, i.e. packaging the food in the container

while still being hot (Col. 8 lines 48-50, 62-68, Col. 9 lines 1-5). Komatsu et al disclose "the hermetic sealing process" (Abstract). Komatsu et al disclose that "this packaging container may take a form of a flexible bag, namely a flexible pouch. More specifically, it is possible to employ as a packaging container a bag-like material prepared by overlapping laminates composed of an inner layer of a heat-sealable resin film and an outer layer of a heat-resistant resin such as polyethylene terephthalate or a metallic foil such as an aluminum foil or laminates composed of an inner layer of a heat-sealable resin film, an intermediate layer of a metallic foil and an outer layer composed of a heat-resistant resin, and heat-sealing side portions of such laminated article" (Col. 4 lines 29-40). Since Komatsu et al disclose cooked or semi-cooked (half-boiled) foods such as noodles filled in the container (Col.8 lines 17, 20, 28, 38-39) and the degree of cooking depends on the moisture level of noodles, the moisture level of semi-cooked (half-boiled) noodles would be expected to be in the range as recited absent any clear and/or convincing arguments to the contrary.

Ando (US 3,892,874) discloses "seasoned instant-cooking noodles, packed in a container, are produced by boiling raw noodles, … placing the dehydrated noodles at a high temperature into cup-shaped containers of insulating material, sealing the containers, and cooling same" (Abstract). Ando also discloses that "initially raw or unprocessed noodles are boiled so as to gelatinize the noodles" (Col.1 lines 60-63). Ando also discloses that "according to the present invention, the precooked noodles while still at a high temperature are packaged into a container of insulating material, without cooling, whereupon the container is immediately sealed with a cover. Then, the

noodles in the sealed container are passed into a cooling chamber to complete the production" (Col.2 lines 45-52). Ando also discloses that "the sealed cup containing the hot noodles is cooled with development of a partial vacuum in the container by the difference in temperature between the inside and the outside of the cup, with a resulting sterilizing effect" (Col. 2 lines 52-56). Specifically in regard to claim 4, Ando discloses that the noodles are packed in the container at elevated temperature (approximately 145ºC) (Claims 1 and 2). Ando discloses that the storage period is about one year (Col.2 lines 64-65).

Since Komatsu et al teaches heat sterilization treatment after overpressure cooling sealing step, and Ando teaches cooling the sealed cup with a resulting sterilizing effect, then it would have been obvious to one skilled in the art to modify teachings of Komatsu et al and to substitute heat sterilization step with cooling step in order to achieve same sterilization effect as taught by Ando. It would also have been obvious to vary cooling speed in order to avoid distortion in the packaging article, occurrence of waving on the sealed face and partial shrinkage of the packaged article. It would have been obvious to store noodles in a refrigerating or freezing storage in order to further preserve the noodles.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794

VS